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The Hall, 2<sup>nd</sup> Floor, Memorial Hall Library, 3 Elm Square, Andover

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Present were: Brown (Chair); Magenheim (Clerk); McDonough, Bargnesi and Boness, Members; Oltman, Rechisky and Wilson (Associate Members). [Boness arrived at 7:53 p.m.]

The meeting opened at 6:30 p.m.

Petition No.: Z-13-109

Premises affected: 176 Haverhill St

Petitioner: Anne Marie & Associates

Members: Brown, Magenheim, McDonough, Bargnesi, Boness, Oltman, Rechisky, and Wilson

Bill Buck, Manager of Anne Marie & Associates & owner of the property presented his request for a variance under Art. VIII, §4.1.2 to raze the existing non-conforming single family dwelling & construct a new one that will not meet the minimum front setback on Liberty Street. Engineer Bill MacLeod gave an overview of the plan depicting the building envelope: the lot fronts on Haverhill Street, Liberty Street & Carlisle Street; it is narrow & the building envelope is so small that even the existing dwelling does not fit in it. The narrow lot & frontage on three streets constitute a hardship. The proposed house conforms to all setbacks except on Liberty St. The minimum frontage requirement is met on Liberty Street and both the existing & proposed houses face Liberty. The lot slopes up to the north & the new house will be constructed with a garage under to fit the topography. The Board asked about the abutters' setbacks. John Hess, 5 Liberty St., opposite 76 Haverhill St., stated that his house is closer to Carlisle than the existing home at 76 Haverhill. He voiced concern about the size of the new house on the small lot, the driveway being directly opposite his own & the proposed setback to Liberty St being too close to the small street. He suggested that the new house be built equidistant from the rear lot line & Liberty St. The Board discussed the location of the new driveway minimizing conflict with Hess', the height of the new house (35' +/-), the existing shed/garage, & grading. Chuck Rigoli, rear abutter at 5 Carlisle St., commented on the size of the proposed house being too large (2700 sf) and too close to narrow Liberty St (15-17' unfit for 2-way vehicular traffic, it was originally built for sewer access). Magenheim made a motion to close the public hearing & waive the site view. McDonough seconded the motion & the Board voted (7-0) to waive the view & close the hearing. Brown designated Bargnesi, Boness & Rechisky to sit as alternates for the remainder of the case. The Board then proceeded to deliberate. Wilson & Oltman stated their support for the variance. Brown noted that due to further encroachment toward Liberty St., a variance is necessary. McDonough voiced concern over the mass/volume of the house & its proximity to Liberty St. Magenheim agreed, suggesting it be set back further from Liberty. Brown agreed with McDonough & Magenheim, adding that the detriment of the proposed construction should be considered in considering the hardship for a variance. Brown voiced his opposition to a variance, but that he could support a special permit for a different plan. Oltman suggested that the front setback would be greater if the proposed house is moved to a wider portion of the lot, further away from Haverhill St. MacLeod asked the Board if they would re-open the hearing. McDonough made a motion to re-open the public hearing. Oltman seconded the motion & the Board voted (5-0) to re-open the public hearing. MacLeod requested a continuance in order to return with a revised plan. McDonough made a motion to continue the hearing to 2/6/14. Magenheim seconded the motion & the Board voted (5-0) to continue the hearing to 2/6/14.

Petition No.: Z-13-110

Premises affected: 3 Enfield Dr

Petitioner: Lembo/Knowles

Members: Brown, Magenheim, McDonough, Bargnesi, Boness, Oltman, Rechisky, and Wilson

Architect, Bill Erickson, represented the petitioners' request for a variance from 4.1.2 &/or a special permit under 3.3.5 to construct additions & alterations that will not meet the minimum front yard depth requirement. The house is located

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in the SRC district & a minimum 50' front setback is required. The frontage is curved on an oddly shaped lot that has a level topography. The addition will be 2 stories with an unfinished 2<sup>nd</sup> floor for future expansion above the garage. If it weren't for the curved frontage and the landscaped islands in the street, the lot would have a straight front lot line & not require a variance to construct an addition to the front of the house at least 50' from the front lot line. In order to conform to the front setback, an addition would be setback 10' further from the front wall of the house. They did consider alternate designs, but there are mature trees in the rear yard that the owners wish to maintain. Abutting houses' front setbacks vary due to the curvature in the street. Oltman made a motion to waive the site view & close the public hearing. McDonough seconded the motion & the Board voted (8-0) to waive the view & close the hearing. Brown designated Oltman, Wilson & Boness to sit as alternates for the remainder of the case. The Board then proceeded to deliberate. Brown noted that the lot is large, without impediment to constructing a conforming addition. He does not feel that a hardship exists. Bargnesi reminded the Board that the petitioners also requested a special permit. Brown explained that the house was built in 1971, at which time it conformed & therefore is not a pre-existing, non-conforming structure and is not eligible for a special permit, adding that the front setback was measured to the foundation at that time & is actually 50.5', not to the overhang as depicted on the current plan. Rechisky commented on the rounded frontage & the intent of the front setback to be from the middle of the street. Brown disagreed. Bargnesi & Magenheim stated that they have no issue with the proposal. Bargnesi stated that the oddly shaped lot with frontage that cuts into it, with the mature vegetation can be considered a hardship for a variance. Brown asked for a motion to grant a special permit with a finding that it's an existing non-conforming structure. No such motion was made. Bargnesi made a motion to find that the property is not pre-existing non-conforming and to deny the special permit. McDonough seconded the motion. Brown noted for the record that the house conformed at the time of construction and now. The Board voted (5-0) to deny the special permit. Bargnesi then made a motion to find that a hardship exists related to the shape of the lot and to grant the requested variance. Magenheim seconded the motion & the Board voted (3-2) (Brown & McDonough against). The petition did not pass. McDonough will write the decision.

Petition No.: Z-13-111

Premises affected: 15 County Rd

Petitioner: South Andover Development

Members: Brown, Magenheim, McDonough, Bargnesi, Boness, Oltman, Rechisky, and Wilson

Attorney Kathryn Morin represented the petitioner, Gerry Welch, manager of South Andover Development. Also present was site engineer Bill MacLeod and Mark Babrowski, Esq. The request is for a variance from 4.1.2 &/or a special permit under 3.3.3 to construct additions/alterations to an existing non-conforming structure/lot. The lot is on the corner of County Rd and Courtney Ln. The house was built circa 1940 on a lot with insufficient frontage. The proposal is to demolish a portion of the existing house & add a 2<sup>nd</sup> story plus addition, extending the footprint to create a house in keeping with the other, newly constructed houses on Courtney Ln. The petitioner contends that the proposed is not a detriment to the neighborhood. MacLeod gave an overview of the plan that includes a long, narrow lot with the longest frontage on Courtney Lane, an unnamed stream that is considered riverfront per Conservation Commission. The lot existed prior to 1996 & is eligible for some grandfathering under the Wetlands Protection Act. The hardship is related to the wetlands at the rear of the lot which decrease buildable area. The existing structure is sited very close to Courtney Ln & County Rd. The Board discussed the restrictions on the lot imposed by the wetlands, particularly that the entire lot is in the riverfront area. The lot is on town sewer & water. Gerry Welch reviewed the changes to the existing house that include minimizing massing, a partial second floor with dormer facing Courtney Ln & a full shed dormer at the rear. The proposed height is 27'. All exterior walls of the existing house will remain. Due to the Wetland Protection Act, they have opted not to raze the existing entirely to build a completely new home. The lot slopes to the rear. They have not filed with Conservation yet. Attorney Babrowski explained the applicability for a special permit under 3.3.3 – it is not substantially detrimental and the size & character fit with the immediate abutting homes. He stated that a variance is

not needed, as in the Gloucester case re: Ch. 40A, Section 10. Vilnis Kreismanis, 17 County Rd., spoke in support. Attorney Morin submitted a letter of support from 6 Courtney Lane which Magenheim read into the record. Brown designated Bargnesi & Rechisky to sit as alternates. Brown asked for a sense from the Board. Generally the Board wants Conservation Commission input before voting. They noted that the wetlands restrict the buildable area. Babrowski suggested voting with a condition to comply with all wetland regulations. MacLeod stated that he would file the current plan & request written input from Conservation. Rechisky made a motion to continue the hearing to 2/6/14. McDonough seconded the motion & the Board voted (6-0) to continue to 2/6/14.

Petition No.: Z-13-112

Premises affected: 38 Park Street

Petitioner: Ewis / Papa Giant's Roast Beef

Members: Brown, Magenheim, McDonough, Bargnesi, Boness, Oltman, Rechisky, and Wilson

Tarek Ewis, owner of Papa Giant's, represented himself in his request for a special permit under 3.1.3.C.12.b to continue the operation of a fast food restaurant (formerly known as Iggy's Pizza). The property is in the GB district & will include delivery. Brown noted that the prior special permit was made specific to the operator. There will be no physical changes to the unit. Mr. Ewis plans to operate 7 days per week from 11 am – 10 pm, Monday – Saturday, and 11 am – 9 pm on Sunday. They may stay open later in the future. Brown designated Boness, McDonough & Bargnesi as alternates. Oltman made a motion to waive a site view & close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate. Brown suggested striking condition 1 from the prior decision; making the special permit run with the tenant and not the building & that upon termination/expiration of the lease the special permit will lapse; keeping the hours of the previous tenant; and no changes to be made to the space. Rechisky made a motion to find that the requested special permit is consistent with the previous use. Magenheim seconded the motion & the Board voted (5-0) to grant the special permit with conditions. Wilson will write the decision.

Petition No.: 4066

Premises affected: 16 Haverhill St

Petitioner: Ellis

Members: Brown, Magenheim, McDonough, Bargnesi and Boness, and Oltman

Susan Ellis represented herself in her request for a special permit to operate an electrology & laser treatment business (a personal service establishment) in the IA district. She has a 1200 sq. ft. unit & 2 employees, including herself, with approximately 8-10 clients per day. Clients are treated one at a time. The equipment includes an epilator & laser machines that hum & beep at very low volumes. Other businesses in the building include dentists, chiropractors, physical therapists, acupuncturists, and photographers, among others. The business will operate primarily in the afternoon & evenings hours with alternating Saturday hours from 8 am – 8 pm. She has a 5 yr lease & parking is provided on site. The Board waived a site view. McDonough made a motion to close the public hearing. Boness seconded the motion & the Board voted (6-0) to close the hearing. Brown designated Boness to sit as an alternate for the remainder of the case. The Board then proceeded to deliberate. Brown suggested granting a special permit with the condition that it be specific to Susan Ellis, that is not transferable to anyone else and that it shall expire upon termination of the lease or expiration of the lease without renewal of the lease. McDonough made the motion as stated by Brown, Magenheim seconded the motion & the Board voted (5-0) to grant the special permit with conditions. McDonough will write the decision.

Petition No.: 4065 & Z-13-116

Premises affected: 200 Andover Street

Petitioner: Shin

Members: Brown, Magenheim, McDonough, Bargnesi and Boness, and Oltman

This is a continued hearing from 12-5-13 + a new application (Z-13-116) to be heard simultaneously. Mark Yannowitz, project architect, represented Mr. Shin in his request to modify Decision No. 3985 by changing the approved plan for the non-conforming addition. The footprint will be different than previously approved, but the same non-conforming setback is proposed to the side lot line. Since the last meeting, they have spoken with some abutters & as a result have decreased the height of the addition to 1 ½ stories. They appeared before the BVHDC on 1/8/14 & obtained approval. The Board discussed the height of the addition. A mezzanine may be constructed in the future, thus the 17' floor to ceiling height. Brown noted that the BVHDC sent an email regarding their approval. Yannowitz informed the ZBA that they will appear before the Planning Board next Tuesday. Yannowitz has spoken with the Ballardvale Crossing Condominium Homeowners' Association. Magenheim asked about proposed signage. Yannowitz informed the Board that they will file with DRB at the appropriate time. There is an existing sign at the end of the driveway on Andover Street. Shin may add an attached sign onto the building façade closest to Andover Street and on the awnings that face the train station. There will be only one use in the building (martial arts studio), which the Inspector of Buildings confirmed is an allowed use as indoor recreation. Kelley Higgins, 18 Dale St., Unit 2E, voiced his support of the new plans on behalf of himself, not the HOA. McDonough made a motion to close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. Brown designated Oltman to sit as an alternate for the remainder of the case. McDonough made a motion to modify Decision No. 3985 by changing conditions 1 & 2 to reference the current plans submitted as approved by the BVHDC & to deny the requested variance as moot. Magenheim seconded the motion & the Board voted (5-0) to grant the modification & deny the variance as moot. Bargnesi will write the decision.

Petition No.: 3803

Premises affected: 0 + 86 River Street

Petitioner: Taylor Cove

Members: Brown, Magenheim, McDonough, Bargnesi and Boness, and Oltman

Attorney Don Borenstein represented Todd Wacome of Taylor Cove. This is the 3<sup>rd</sup> session regarding a request to modify the 40B project to include an optional upgrade to market rate units. Previously outlined issues include: 1. What can be done to minimize conversion of additional living space to bedrooms? A proposed decision was submitted via email including a restriction of a maximum of 3 bedrooms per unit that will also be written in the condo documents, thus making it enforceable by the Town & the condo association. 2. Enhanced affordability – key aspects will be upgraded to include granite counter tops, oak stair case treads, central A/C, upgraded rails, balusters, decking. The option for upgraded market rate units increases the overall benefits of the project with increased tax revenue, desirability & marketability. The Board discussed why the market rate units will not be upgraded. Wacome explained that it is not economic to upgrade the affordable units since they would not break even on them since they are sold at reduced prices. Borenstein reminded the Board that MassHousing determines the price for affordable units using a formula that is independent of the project. Borenstein further reminded the Board that a condition restricting all units to a maximum of 3 bedrooms give the legal right of enforcement. He offered to draft language for the Board's approval. The Board discussed the attic & basement areas and the potential conversion to habitable space. Brown asked the Inspector if there is any code issue with additional habitable space. Inspector of Buildings Clemente suggested that a restriction can be placed on the building permit to regulate the use / prevent bedrooms being created. Brown asked for a sense of the Board. McDonough asked for the table from the original application to be included in the decision to specify the size of the upgrade option. Borenstein noted that it refers to specific plans. Boness pointed out that the

architectural changes have not been submitted. Borenstein stated that conditions in the draft decision address this issue, specifically condition 3C allowing the inspector withholding the permit if he is not satisfied that it will prevent conversion to bedroom. Wacome emphasized that the upgrade is designed to be non-compliant with egress so it can't be converted to a legal bedroom. Bargnesi added that the Homeowners Association can & will enforce the number of bedrooms. Brown then focused on the developer demonstrating that denying the proposed change would render the project uneconomic. The Board didn't have any issue with conversion of basements to living space. Some were concerned about attic space being converted & others wanted the affordable units to have the upgrade option. Brown suggested closing the hearing but keeping the deliberation open in order to draft a decision for the Board to vote on at the 2/6/14 meeting. Bargnesi made a motion to close the public hearing. McDonough seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Brown noted that Borenstein will provide the wording in the condo documents and that conditions 2 & 42 need minor adjustments to floor plans. Boness expressed concern for the disparity in the units. Brown suggested striking 2-7 in condition 42 and replacing with 5-7 and that the applicant may also make minor adjustments to unit floor plans, striking 'and attic levels'. In condition 3B add 'there shall be the following provisions' inserting language drafted by Borenstein. McDonough made a motion to approve the draft decision with the changes made tonight. Oltman seconded the motion & the Board voted (5-0) to approve the draft decision. Boness asked for clarification that the plan reference is 9/1/13. Borenstein will verify & correct as needed. Borenstein will submit the procedural history.

Petition No.: 4063 & Z-13-113

Premises affected: 48 Summer Street

Petitioner: Jeffco

Members: Brown, Magenheimer, McDonough, Bargnesi and Boness, and Oltman

Attorney Mark Johnson updated the Board on what has occurred since the last meeting: letter sent to Town Counsel, received Town Counsel's response, filed a new application to amend Decision No. 802, received Chair Brown's letter to Town Counsel as well as Town Counsel's response to that letter. Johnson submitted photos & draft findings, in addition to the 1965 bylaw section & renderings of the proposed structure depicting the garage on Summer Street setback further. They have been before the Preservation Commission & received an email from Chair Karen Hermann, the concerns of which are incorporated into the draft findings. The only deficiency is the lot area and the proposed setbacks conform to the 200' average analysis. Johnson explained to the Board regarding the use that at the time the special permit was granted for the use, it attaches to the property, not the structure. In the alternative, a special permit under section 3.3.7 & a modification of Decision No. 802 can be granted. Brown argued that under the formerly codified bylaw, Section IV.B.3 allowed in the SRA & SRB districts the conversion of a 1-2 family to more units. However, as detailed in Town Counsel's response to Brown's letter, he disagreed. Brown feels that without the existing structure, the property is not eligible for a special permit for a new structure. Boness agreed adding that the proposal is an improvement. Oltman agreed that it can be done by special permit. Bob Ganley, direct abutter on Washington Ave., reiterated his concern about shading from the proposed garage killing his perennial garden & light overspill. He asked that conditions be in writing, including that there will not be a full basement. Boness inquired about the fence shown on the plan. Ahern & Ganley confirmed that it is an existing 4' cedar fence. Both agreed that it is sufficient. Brown noted that the garage is not on the plan. Ahern agreed to revise the plans & submit them. Brown noted for the record that the grading plan is that of 12-4-13. Ahern also agreed to submit a grading & lighting plan with a 14' maximum garage height. McDonough & Bargnesi voiced no concerns. Johnson requested to withdraw the requested variance for parking. Bargnesi made a motion to allow the variance for parking to be withdrawn (section 5.1.13.1). McDonough seconded the motion & the Board voted (5-0) to allow the variance to be withdrawn. Brown suggested closing the hearing tonight, drafting the decision & voting on 2-6-14. Boness agreed. Johnson asked the Board to vote tonight. McDonough made a motion to close the public hearing. Oltman seconded the motion & the Board voted (5-0) to close the hearing. Brown

noted that Attorney Johnson will draft the additional conditions, including lighting, and the Board will take a formal vote in February.

Approval of Minutes

12/5/13 – Magenheimer made a motion to approve the minutes of 12/5/13. Oltman seconded the motion & the Board voted (6-0) to approve the minutes of 12/5/13.

Brown gave a summary of the Executive Session held on 1/6/14.

The meeting adjourned at 10:25 p.m.